IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

TUESDAY, THE 2ND JANUARY 2007 / 12TH POUSHA 1928

Crl.Rev.Pet.No. 299 of 1998

AGAINST THE ORDER DATED 27/02/1998 IN CRMP 39/98 IN SC.58 & 106/1995 of ASSISTANT SESSIONS COURT, HOSDRUG

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REVN. PETITIONERS/ACCUSED IN S.C.58/95:

1. C.UNNIKRISHNAN, S/O C.CHANDRASEKHARAN NAIR, 24 YEARS, PANATHADY VILLAGE, HOSDURG TALUK.

2. N.VIJAYAN PILLAI, S/O NEELAKANDAN PILLAI, 24 YEARS, HINDU, AGRICULTURIST, DO. DO.

BY ADV. SRI.V.N.ACHUTHA KURUP
SRI.B.S.SWATHY KUMAR

RESPONDENTS/COMPLAINANT:

1. STATE OF KERALA REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

ADDL.R2

MADHUSOODANAN PILLA, S/O KUMARA PILLA, MELETHIL VEEDU, CHAMUNDI KUNNU, PANATHADY VILLAGE, HOSDURG TALUK.

((mpleaded as per order dt. 24.8.01 on CRMP 4198/01)

BY PUBLIC PROSECUTOR SRI.SANTHOSH KUMAR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 02/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.P. Balachandran, J.

Crl.R.P.No. 299 of 1998

ORDER

The petitioners are accused in S.C.No.58/95 on the file of the Assistant Sessions Court, Hosdurg. On the complaint of the first petitioner another case also is registered as counter to S.C.No.58/95 and that was committed to the Sessions Court and is numbered as S.C.No.106/95. Crl.M.P.No.39/98 in S.C. Nos.58/95 and 106/95 was filed by the Additional Public Prosecutor, Hosdurg under Section 321 Cr.P.C. seeking leave to withdraw from the prosecution. The Assistant Sessions Judge, vide order impugned, has disallowed the leave sought for and dismissed the said petition. Hence, this revision.

2. The petition filed by the Addl. Public Prosecutor is extracted below for sake of clarity in reference:

"S.C.No.58/95 and S.C.No.106/95 are case and counter case pending before this Hon'ble court for disposal. Now, the Government have informed that the Govt. have no objection in withdrawing both the cases with the leave of the court. Hence, this petition.

On going through the case records, reveals that it is a clash between two political parties in connection with the election of a Co-operative Bank. The witnesses are mentioned in the First Information Statement of Madhusoodhanan in S.C.No.58/95 are accused in S.C.No.106/95. So, it is crystal clear that it is a clash between two groups. Even though one injury of Madhusoodhanan is grievous, the intention of the accused were not to kill, but happened in the clash. Unnikrishnan and Vijayan Pillai are also injured in S.C.No.106/95.

The intention of the Govt. is to keep the locality in peace. So, Govt. have decided to withdraw both cases with the leave of the court. If it is withdrawn there would not be any law and order problems. Instead, it will keep the locality in peace and harmony among the people.

So, it is prayed that in the interest of justice the court may be pleased to allow

> the prosecution to withdraw both cases pending before this Court."

The move for withdrawing the cases has come from the Government. The said letter is also produced along with the Crl.M.P. Reference No.1 in the said letter is a petition filed by the first petitioner, who is the first accused in S.C.No.58/95. By the said letter, the Additional Chief Secretary to Government has informed the District Collector, Kasaragod that the Government have no objection to withdraw S.C.No.58/95 on the file of the Asst. Sessions Court, Hosdurg relating to Crime No.95/93 of Rajapuram Police Station and S.C.No. 106/95 on the file of the Asst. Sessions Court, Hosdurg relating to a private complaint and necessary instructions in the matter be given to the concerned Public Prosecutor.

3. The Public Prosecutor has stated that the cases have originated in a clash between two political parties in connection with the election

of a Co-operative Bank; that though one injury sustained to Madhusoodhanan, the injured in S.C.No. 58/95, is grievous, the intention of the accused was not to kill, but, happened in a clash. It is not known from where the Prosecutor got the information that the intention of the accused was not to kill. He has further stated that the intention of the Government is to keep peace in the locality and so, the Government have decided to withdraw both the cases. The offences involved are offences against the Society at large and one fails to understand the logic behind the submission that peace can be maintained in the locality if case and counter case are withdrawn. This is a case, where, practically, there is no application of mind by the Public Prosecutor in seeking for leave to withdraw from the prosecution. It is only that he was acting on the directions of the Government. The court below has acted in the most appropriate manner in disallowing the case to be withdrawn.

There is no illegality, impropriety or irregularity in the order impugned.

This revision is, hence, devoid of merit and is dismissed. The Sessions Judge concerned shall proceed with the trial of the case untrammeled by any of the observations made in the order impugned, as regards the merits of the case and giving top priority, considering the fact that the cases of 1995 have been unnecessarily protracted by the Prosecutor, filing the withdrawal application on 26.2.1998 and the petitioners filing this Crl.R.P. and expediting trial will be in the interest of the public and in administration of justice.

2nd January, 2007 (K.P.Balachandran, Judge)

tkv

K.P.Balachandran, J.

Crl.R.P.No.299 of 1998

ORDER

2nd January, 2007